

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) K15015									
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 10/669,007	Filed September 24, 2003								
		First Named Inventor Rie SATO									
		Art Unit 2822	Examiner Tsz K. CHIU								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; text-align: center; vertical-align: top;">/Ronald Kimble/ _____ Signature</td></tr><tr><td style="vertical-align: top;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="text-align: center; vertical-align: top;">Ronald Kimble _____ Typed or printed name</td></tr><tr><td style="vertical-align: top;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>44,186</u></td><td style="text-align: center; vertical-align: top;">(202) 280-2073 _____ Telephone number</td></tr><tr><td style="vertical-align: top;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="text-align: center; vertical-align: top;">April 1, 2009 _____ Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	/Ronald Kimble/ _____ Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Ronald Kimble _____ Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>44,186</u>	(202) 280-2073 _____ Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	April 1, 2009 _____ Date
<input type="checkbox"/> applicant/inventor.	/Ronald Kimble/ _____ Signature										
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<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.											

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Rie SATO, et. al	Conf. No.:	1801
Serial No.:	10/669,007	Art Unit:	2822
Filed:	09/24/03	Examiner:	Tsz K. CHIU

Title: SPIN-TUNNEL TRANSISTOR AND MAGNETIC REPRODUCING HEAD

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

I. INTRODUCTORY COMMENTS

This Pre-Appeal Brief Request for Review is being filed in response to the Office Action dated December 1, 2008 in the above-referenced application.

II. STATUS OF CLAIMS

Claims 1-12 are pending. Claims 1-5 and 7-12 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Carey et al. (U.S. Patent Publication No. 2005/0030674). Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Cary et al. in view of Katti et al. (U.S. Patent No. 6,707,084).

III. ARGUMENTS

A. Shields 136 and 138 of Carey et al. do not disclose the claimed emitter and collector.

Claim 1 recites “an emitter” and “a collector”. These structural features of the invention have recognized meanings according to one of ordinary skill in the art. As Applicants argued at page 7, 4th paragraph of the July 31, 2008 Amendment, Carey makes no mention of an emitter or a collector. Applicants hereby incorporate those arguments of record from this section of the July 31, 2008 Amendment. Exemplary embodiments of the emitter and collector of the present invention are described at the top of page 8 of the present specification.

In the December 1, 2008 Amendment, the Examiner states that the shields 136 and 138 of Carey et al. disclose the claimed emitter and collector. At page 5 of the Office Action, in the Response to Arguments section, the Examiner states that the Carey reference discloses that the shields “are formed of conductive material and are adjacent to each other to enclose the base layer therebetween.” In addition to noting that Carey et al. does not disclose the claimed emitter and collector, Applicants respectfully submit that this description of the shields is not in the Carey et al. reference, and that the Examiner does not provide where or how this description is disclosed.

B. Carey et al does not disclose a base including an electrode configured to apply a voltage between the emitter and the base.

Claim 1 recites a “base including an electrode configured to apply a voltage between the emitter and the base.” The Examiner states that this feature is disclosed by paragraph [0006] of Carey et al. in the December 1, 2008 Office Action. Applicants respectfully submit that paragraph [0006] does not disclose an electrode as claimed.

In the December 1, 2008 Office Action, at the top of page 6 in the Response to Arguments section, the Examiner seemingly agrees, using the term “however” in his argument. Then, the Examiner argues that Carey et al. teach that the contact pinned layer supply sense current to the device as noted in paragraph [0006]. The Examiner argues that since the sense current is measured to detect the varying device resistance induced by the external magnetic field, that “there are current/voltage going between the emitter and the base.” Applicants respectfully submit that this conclusion by the Examiner in view of paragraph [0006] of Carey et al. does not disclose the claimed electrode in a base configured to apply a voltage.

C. Carey et al. does not disclose a tunnel barrier layer.

Claim 1 recites a tunnel barrier layer. As noted at page 10, paragraphs 2 and 3 of the February 25, 2008 Amendment, the tunnel barrier layer of the present invention is exchange coupled with an adjoining one of the magnetization pinned layer, and the magnetization of the magnetization pinned layer being fixed by the exchange coupling between the magnetization pinned layer of ferromagnetic material and the tunnel barrier of antiferromagnetic material.

However, in Carey et al, underlayer 134 does not pin the pinned layer as alleged by the Examiner in the December 1, 2008 Office Action. Rather, pinning is accomplished through layer 132 (see paragraph [0044] of Carey et al.).

In the Response to Arguments section at page 5 of the December 1, 2008 Office Action, the Examiner states that the argument in the previous Response regarding layer 134 not pinning the pinned layer is not being claimed. Applicants respectfully submit that claim 1 recites “the magnetization of the magnetization pinned layer of ferromagnetic material being fixed by the exchange coupling between the magnetization pinned layer of ferromagnetic material and the tunnel barrier of antiferromagnetic material.”

Applicants respectfully submit that the application is in condition for allowance. Should there be anything further necessary to place the application in condition for allowance; the Examiner is kindly requested to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

/ Ronald Kimble /
Reg. No. 44,186

Dated: April 1, 2009
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